

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

CUSTOM COMMUNICATIONS, INC.,
D/B/A CUSTOM ALARM, ET AL.

Petitioners,

v.

FEDERAL TRADE COMMISSION,
Respondent.

Nos. 24-3137, 24-3388, 24-3415, 24-3442,
24-3469

CERTIFIED LIST DESCRIBING THE RECORD

I, April J. Tabor, Secretary of the Federal Trade Commission and official custodian of its records, do hereby certify that the list attached hereto adequately describes all documents, transcripts, comments, exhibits, and other materials constituting the record of the rulemaking proceeding for the Rule Concerning Recurring Subscriptions and Other Negative Option Programs, FTC Matter No. P064202 (“Negative Option Rule”).

This list is certified to the United States Court of Appeals for the Eighth Circuit, pursuant to the filing in said Court of a Petition for Review of the Negative Option Rule, which was approved by the Commission on October 16, 2024, and published in the Federal Register on November 15, 2024. *See* 89 Fed. Reg. 90476.

In Witness Whereof, I hereunto subscribe my name on behalf of said Federal Trade Commission, with its Headquarters in the City of Washington, District of Columbia, this sixth of January, 2025.

Respectfully submitted,



April J. Tabor, Esq.
Secretary of the Commission

**CERTIFIED LIST OF DOCUMENTS AND OTHER INFORMATION CONSTITUTING
THE RULEMAKING RECORD**

No.	Description
1.	Rule Concerning Use of Prenotification Negative Option Plans, 16 CFR part 425, 38 FR 4895 (Feb. 22, 1973)
2.	Use of Negative Option Plans by Sellers in Commerce, 38 FR 33766 (Dec. 7, 1973)
3.	Advance Notice of Proposed Rulemaking, 62 FR 15135 (Mar. 31, 1997)
4.	Regulatory Review and Confirmation of the Trade Regulation Rule Concerning Use of Prenotification Negative Option Plans, 63 FR 44555 (Aug. 20, 1998)
5.	Negative Options: A Report by the Staff of the FTC's Division of Enforcement (Jan. 2009), https://www.ftc.gov/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff
6.	Advance Notice of Proposed Rulemaking, 74 FR 22720 (May 14, 2009)
7.	Confirmation of Rule, 79 FR 44271 (July 31, 2014)
8.	Advance Notice of Proposed Rulemaking, 84 FR 52393 (Oct. 2, 2019)
9.	Comments to Oct. 2, 2019 ANPR, FTC-2019-0082, https://www.regulations.gov/docket/FTC-2019-0082
10.	Enforcement Policy Statement, 86 FR 60822 (Nov. 4, 2021)
11.	Notice of Proposed Rulemaking, 88 FR 24716 (Apr. 23, 2023)
12.	16,612 written public comments to April 23, 2023 NPRM (88 FR 24716), unique comments available at FTC-2023-0033-0001, https://www.regulations.gov/document/FTC-2023-0033-0001/comment
13.	Initial and Final Notice of Informal Hearing, 88 FR 85525 (Dec. 8, 2023)
14.	Comments and additional submissions to Dec. 8, 2023, Informal Hearing Notice available online at regulations.gov at https://www.regulations.gov/document/FTC-2023-0073-0001
15.	January 16, 2024, Informal Hearing Transcript
16.	January 31, 2024, Informal Hearing Transcript
17.	February 14, 2024, Informal Hearing Transcript
18.	Additional Comments and Submissions in connection with the Informal Hearing, available at https://www.regulations.gov/docket/FTC-2024-0001
19.	Recommended Decision by Presiding Officer, https://www.regulations.gov/comment/FTC-2024-0001-0042
20.	Final Rule and Statement of Basis and Purpose, 89 FR 90476 (Nov. 15, 2024)
21.	FTC Act, 15 U.S.C. §§ 41-58
22.	Unordered Merchandise Statute, 39 U.S.C. 3009

23. McCarran-Ferguson Act, 15 U.S.C. 1012
24. Electronic Fund Transfer Act, 15 U.S.C. 1693-1693r
25. E-Sign, 15 U.S.C. 7001-7006
26. 12 U.S.C. § 5581
27. Restore Online Shoppers' Confidence Act, 15 U.S.C. § 8401, *et seq.*
28. Regulatory Flexibility Act, 5 U.S.C. 601-612
29. Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, 5 CFR 1320.3
30. Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. 7701-7713; 16 CFR part 316
31. Television Viewer Protection Act of 2019, 47 U.S.C. § 562
32. Regulation E, 12 CFR 1005.10
33. Commission's Rules of Practice, 16 CFR part 1
34. Telemarking Sales Rule ("TSR"), 16 CFR part 316
35. Cooling-Off Rule, 16 CFR part 429
36. Funeral Industry Rule, 16 CFR part 453
37. Franchising Rule, 16 CFR part 436
38. Business Opportunity Rule, 16 CFR part 437
39. Used Motor Vehicle Rule, 16 CFR part 455
40. Impersonation Rule, 89 FR 15017 (Feb. 29, 2024)
41. Merchandise Rule, 40 FR 49492 (Oct. 22, 1975)
42. Merchandise Rule, 79 FR 55615 (Sept. 17, 2014)
43. TSR, 89 FR 26760 (April 16, 2024)
44. TSR, 60 FR 43842 (Aug. 23, 1995)
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